

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

VANTEK, INCORPORATED, a
Washington corporation,

Plaintiff,

vs.

RAYMOND S. STILLWELL, a
married person; GREEN
INVESTMENT GROUP, INC.,
an Illinois corporation;
M2GREEN, LLC, a Montana
limited liability company;
M2 GREEN REDEVELOPMENT,
LLC, an Illinois limited liability
company; Defendant MARK D.
SPIZZO, a married person;
JOHN DOES and JANE DOES,
I through V; and JOHN DOES,
INC., I through V;

Defendants.

NO.

COMPLAINT
(Breach of Contract, Breach of
Fiduciary Duty, and Interference
with Business Expectancy)

[DEMAND FOR JURY TRIAL]

Plaintiff VANTEK, INCORPORATED (herein "VANTEK") alleges as
follows:

I. IDENTIFICATION OF PARTIES.

1.1 Plaintiff VANTEK, INCORPORATED, is a corporation organized

VANT005.COM.wpd

COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 1

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 and existing under the laws of the state of Washington with its principal place
2 of business located in Vancouver, Clark County, Washington.

3 1.2 Defendant RAYMOND S. STILLWELL is a married person residing
4 in the state of Illinois and the president and shareholder of Defendant GREEN
5 INVESTMENT GROUP, INC., a member of Defendant M2GREEN, LLC, and a
6 member of Defendant M2 GREEN REDEVELOPMENT, LLC. At all times
7 alleged herein, Defendant STILLWELL acted as an authorized agent and owner
8 of these corporate entities and on behalf of himself. Defendant STILLWELL is
9 also an attorney at law who was licensed to practice law in the state of Illinois
10 from November 27, 1973, through 2010.

11 1.3 Defendant GREEN INVESTMENT GROUP, INC., is a corporation
12 organized and existing under the laws of the state of Illinois with its principal
13 place of business located in Alton, Illinois.

14 1.4 Defendant M2GREEN, LLC, is a limited liability company
15 organized and existing under the laws of the state of Montana with its principal
16 place of business located in Alton, Illinois.

17 1.5 Defendant M2 GREEN REDEVELOPMENT, LLC, is a limited
18 liability company organized and existing under the laws of the state of Illinois
19 with its principal place of business located in Alton, Illinois.

20 1.6 Defendant MARK D. SPIZZO is a married person residing in the
21 state of Illinois and is a shareholder and an officer of Defendant GREEN
22 INVESTMENT GROUP, INC., a member of Defendant M2GREEN, LLC, and a

23 VANT005.COM.wpd

24 COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 2

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 member of Defendant M2 GREEN REDEVELOPMENT, LLC. At all times
2 alleged herein, Defendant SPIZZO acted as an authorized agent and owner of
3 these corporate entities, on behalf of Defendant STILLWELL, and on behalf of
4 himself.

5 1.7 Defendants JOHN DOES and JANE DOES, I through V, are
6 individuals who are liable to Plaintiff VANTEK, INCORPORATED, for the
7 conduct hereinafter alleged. However, Plaintiff VANTEK, INCORPORATED,
8 does not currently know the identity of these individuals.

9 1.8 Defendants JOHN DOES, INC., I through V, are corporate entities
10 which are liable to Plaintiff VANTEK, INCORPORATED, for the conduct
11 hereinafter alleged. However, Plaintiff VANTEK, INCORPORATED, does not
12 currently know the identity of these corporate entities.

13 II. JURISDICTION.

14 2.1 Plaintiff VANTEK, INCORPORATED, and all of the defendants are
15 citizens of different states and the amount in controversy exceeds \$75,000.00.
16 This court has diversity jurisdiction pursuant to 28 U. S. C. A. § 1332(a)(1).

17 2.2 This court has personal jurisdiction over all of the defendants
18 because all of them have conducted business within the state of Washington,
19 have consented to jurisdiction in this court, and/or have engaged in business or
20 tortious transactions which have damaged a resident of this state.

21 III. VENUE.

22 3.1 Venue is proper in this judicial district pursuant to 28 U. S. C. A.

23 VANT005.COM.wpd

24 COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 3

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 § 1391(a)(2) or (3) because a substantial part of the events or omissions giving
2 rise to the claims occurred and one or more of the defendants are subject to
3 personal jurisdiction at the time this action is commenced.

4 IV. FACTS.

5 4.1 On or about May 12, 2009, Plaintiff VANTEK and Defendant
6 GREEN INVESTMENT GROUP, INC., (herein "Defendant GIGI") entered into
7 a partnership agreement (herein "the Partnership Agreement") in which the
8 parties agreed to place their money, efforts, labor, and skill in subsequent
9 business ventures and to divide the expenses and profits thereof. Attached
10 hereto as Exhibit "A" is a true and accurate copy of this Partnership Agreement.

11 4.2 Pursuant to the Partnership Agreement, Plaintiff VANTEK
12 contracted to introduce "properties and business opportunities" and generally
13 "shut down pulp and paper mills" to Defendant GIGI and Defendant GIGI agreed
14 to provide the "technology and a track record of developing similar sites." In
15 addition, Plaintiff VANTEK and Defendant GIGI agreed to "work together on
16 these sites as 50% - 50% partners[.]" The Partnership Agreement contemplated
17 the formation of another entity or entities "to own and develop said property(ies)"
18 with Plaintiff VANTEK and Defendant GIGI "each owning 50% and of said
19 property(ies) unless otherwise agreed between the parties."

20 4.3 The Partnership Agreement by its terms provided for the
21 transaction to be governed by the laws of the state of Washington and subject
22 to the exclusive jurisdiction of Washington courts. At all times material to the
23

24 VANT005.COM.wpd

COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 4

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 claims herein, Plaintiff VANTEK's principal place of business was located in
2 Clark County, Washington, and within the judicial district of the Western District
3 of Washington.

4 4.4 On or about November 19, 2009, and pursuant to the terms of the
5 Agreement, Defendant RAYMOND S. STILLWELL (herein "Defendant
6 STILLWELL") incorporated VanGreen, LLC, in the state of Colorado. Attached
7 hereto as Exhibit "B" is a true copy fo the Articles of Organization filed with the
8 Colorado Secretary of State. Plaintiff VANTEK, a Washington corporation, and
9 Defendant GIGI, an Illinois corporation, were the two members of VanGreen,
10 LLC. At all material times alleged herein, Defendant STILLWELL and
11 Defendant SPIZZO knew that Plaintiff VANTEK's principal offices were located
12 in the state of Washington.

13 4.5 In or about January 2010, and pursuant to the Partnership
14 Agreement, Plaintiff VANTEK introduced Defendant STILLWELL, Defendant
15 SPIZZO, and Defendant GIGI to a project known as the Smurfit-Stone paper mill
16 (herein "the Smurfit-Stone Paper Mill") in the Frenchtown area of Missoula,
17 Montana. The Smurfit-Stone Paper Mill was a shut down pulp and paper mill.
18 In January 2011, and pursuant to the Partnership Agreement, Plaintiff VANTEK
19 reintroduced the defendants to this project. In an e-mail dated January 14,
20 2011, Shelina Nelson, vice-president of Vantek, notified Defendant STILLWELL
21 and Defendant GIGI that a prior group's offer for the Smurfit-Stone Paper Mill
22 "is going down the drain rapidly" and indicated that Plaintiff VANTEK hoped that

23 VANT005.COM.wpd

24 COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 5

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 “we can move forward on this project through your group, and wonder if there’s
2 been any progress on your end in this regard.” A true copy of this e-mail dated
3 January 14, 2011, is attached hereto as Exhibit “C.”

4 4.6 Defendant STILLWELL, Defendant SPIZZO, and Defendant GIGI,
5 as required by the Partnership Agreement on behalf of Plaintiff VANTEK and
6 VanGreen, LLC, commenced negotiations with Smurfit-Stone Container
7 Corporation for the purchase of the Smurfit-Stone Paper Mill and seeking out
8 potential lending sources for the purchase of the project. During these
9 negotiations, Defendant STILLWELL, Defendant SPIZZO, and Defendant GIGI
10 kept Plaintiff VANTEK apprized as to the status of the lending opportunities and
11 purchase aspects of this transactions and sent multiple e-mails to Plaintiff
12 VANTEK’s offices in the state of Washington. On February 13, 2011,
13 Defendant STILLWELL sent an e-mail to Plaintiff VANTEK which stated: “Then,
14 once we get past the LOI [letter of intent] to the PSA [purchase and sale
15 agreement], the terms of the partnership or structure of the purchase . . . can
16 be determined.” A true copy of this e-mail dated February 13, 2011, is attached
17 hereto as Exhibit “D.”

18 4.7 On February 14, 2011, Defendant STILLWELL notified the parties
19 via e-mail that the transaction was expected to close on March 31, 2011, for a
20 purchase price of \$18 million. In the same e-mail, Defendant STILLWELL
21 stated:

22 [T]he purchaser is a consortium including VanGreen, LLC, and

23 VANT005.COM.wpd

24 COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 6

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 Independence, that will connect the proof of funds letter to the
2 LOI, which will be in the name of the "partnership" entity between
3 Vantek and Green Investment Group. VanGreen, LLC, is a
4 Colorado limited liability corporation formed over a year ago by
5 Gordon [Cassie, president of Vantek] and us for deals where we
6 wold be working together.

7 A true copy of this e-mail dated February 14, 2011, is attached hereto as Exhibit
8 "E."

9 4.8 For approximately eighteen (18) months, Plaintiff VANTEK spent
10 considerable time, effort and cost in having its employees researching the
11 Smurfit-Stone Mill by engaging in the following actions in furtherance of this
12 transaction: researching the site, meeting with potential sellers, making endless
13 phone calls, sending numerous e-mails, providing specific information to
14 Defendant STILLWELL, Defendant SPIZZO and Defendant GIGI including,
15 without limitation, biographical data on seller, time lines, pricing, financial and
16 terms of payment, introducing and reintroducing these defendants to the parties
17 related to this project, informing them that the site was available for sale,
18 communicating with the commercial broker to obtain relevant information,
19 keeping them abreast of other offers for the project, immediately notifying them
20 when the site actually became available to the parties, searching for potential
21 financing partners, and communicating with and vetting potential financing
22 partners.

23 4.9 On or about March 7, 2011, Defendant STILLWELL had a lengthy
24 telephone conversation with Shelina Nelson, vice-president of Plaintiff VANTEK,

VANT005.COM.wpd

COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 7

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 in which he informed Nelson that he and Defendant SPIZZO has submitted a
2 revised Purchase and Sale Agreement for the owners of the Smurfit-Stone Mill
3 using the name of Defendant GIGI instead of VanGreen, LLC. He assured
4 Nelson that this entity was used to take advantage of the current awareness that
5 people have of Green Investment Group in the Missoula, Montana, area. He
6 assured her: "It makes no difference to Vantek's agreement with VanGreen and
7 Green Investment Group."

8 4.10 In April 2011, Nelson again telephoned Defendant STILLWELL
9 indicating that Plaintiff VANTEK has heard that the transaction to purchase the
10 Smurfit-Stone Paper Mill would close on April 29, 2011, through a different
11 buyer. Defendant STILLWELL represented to Nelson that he had performed
12 some additional research, had several additional discussions with the
13 representatives of the Smurfit-Stone Paper Mill, and had reached the
14 conclusions that this situation was "messy" so he was not now interested in
15 purchasing the site.

16 4.11 Plaintiff VANTEK received no further communications from
17 Defendant STILLWELL or Defendant GIGI, but later learned through the media
18 on or about May 5, 2011, and other sources that Defendant STILLWELL,
19 Defendant SPIZZO, and Defendant GIGI formed two other entities to take title
20 to and consummate the purchase of the Smurfit-Stone Paper Mill.

21 4.12 Instead of allowing Plaintiff VANTEK to participate in this
22 transaction, Defendant STILLWELL and Defendant SPIZZO incorporated a
23

24 VANT005.COM.wpd

COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 8

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 limited liability company, Defendant M2GREEN, LLC, in the state of Montana
2 on March 29, 2011, to purchase the Smurfit-Stone Paper Mill and incorporated
3 a different limited liability company, Defendant M2 GREEN REDEVELOPMENT,
4 LLC, on April 22, 2011, in the state of Illinois to hold title to and manage the
5 Smurfit-Stone Mill.

6 4.13 Defendant STILLWELL and Defendant SPIZZO diverted this
7 business opportunity from Plaintiff VANTEK and/or VanGreen, LLC, to
8 Defendant M2GREEN, LLC, and M2 GREEN REDEVELOPMENT, LLC.

9 V. CAUSES OF ACTION.

10 **CAUSE OF ACTION NO. 1: BREACH OF CONTRACT**
11 **(Against Defendant Green Investment Group, Inc.)**

12 5.1 Plaintiff VANTEK realleges and reasserts the allegations set forth
13 in paragraphs 1.1 through 4.13 above.

14 5.2 Plaintiff VANTEK and Defendant GIGI entered into a Partnership
15 Agreement dated May 12, 2009, in which Plaintiff VANTEK would introduce
16 business opportunities in the form of shut down pulp and paper mills to
17 Defendant GIGI and Defendant GIGI would furnish the technology and obtain
18 the lending necessary to purchase and develop similar site.

19 5.3 Plaintiff VANTEK introduced the Smurfit-Stone Paper Mill to
20 Defendant GIGI and has performed all of the conditions precedent to its
21 obligations under the Agreement dated May 12, 2011.

22 5.4 Defendant GIGI has breached this Agreement in at least one or

23 VANT005.COM.wpd

24 COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 9

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 more of the following ways: (a) failing to permit the entity formed by Plaintiff
 2 VANTEK and Defendant GIGI known as VanGreen, LLC, to participate in the
 3 ownership and development of the Smurfit-Stone Mill; (b) by failing to permit
 4 Plaintiff VANTEK to participate in the ownership of the entities subsequently
 5 formed, e.g., Defendant M2GREEN, LLC, and Defendant M2 GREEN
 6 REDEVELOPMENT, LLC, to hold ownership of and develop the Smurfit-Stone
 7 Paper Mill; and/or (c) to allow Plaintiff VANTEK to work together as 50% - 50%
 8 partners with it on the Smurfit-Stone Paper Mill project.

9 5.5 By reason of this breach of contract, Plaintiff VANTEK has been
 10 damaged in amount in excess of \$75,000.00 and in an exact amount to be
 11 proven at trial.

12 **CAUSE OF ACTION NO. 2: BREACH OF FIDUCIARY DUTY**
 13 **(Against Defendant Green Investment Group, Inc.,**
 14 **Defendant Stillwell, Defendant Spizzo, Defendant M2Green, LLC,**
 15 **and Defendant M2 Green Redevelopment, Inc.)**

16 5.6 Plaintiff VANTEK realleges and reasserts the allegations set forth
 17 in paragraphs 1.1 through 5.5 above.

18 5.7 Defendant GIGI, Defendant STILLWELL, Defendant SPIZZO,
 19 Defendant M2GREEN, LLC, and Defendant M2 GREEN REDEVELOPMENT,
 20 LLC, possessed fiduciary duties to Plaintiff VANTEK by reason of their status
 21 as partners, expected partners, or principals of partnership entities in the
 22 Smurfit-Stone Paper Mill project including, without limitation, the duty of loyalty,
 23 the duty of care, and the obligation of good faith and fair dealing.

24 VANT005.COM.wpd

COMPLAINT (Breach of Contract,
 Breach of Fiduciary Duty, and Interference
 with Business Expectancy) - 10

Grant & Elcock, PLLC
 Attorneys and Counselors at Law
 Heritage Plaza, Suite 104
 15640 NE Fourth Plain Blvd.
 Vancouver, WA 98682
 TEL: (360) 694-8488
 FAX: (360) 694-8688

1 5.8 The fiduciary duties of Defendant GIGI, Defendant STILLWELL,
2 Defendant SPIZZO, Defendant M2GREEN, LLC, and Defendant M2 GREEN
3 REDEVELOPMENT, LLC, included, without limitation, a trustee-level
4 responsibility for partnership assets held and a constructive trust on those who
5 hold the assets, an obligation to refrain from usurping partnership opportunities,
6 a prohibition against direct competition with the partnership, and an obligation
7 to avoid conflict-of-interest transactions and circumstances.

8 5.9 Defendant GIGI, Defendant STILLWELL, Defendant SPIZZO,
9 Defendant M2GREEN, LLC, and Defendant M2 GREEN REDEVELOPMENT,
10 LLC, breached their fiduciary duties to Plaintiff VANTEK by engaging in, without
11 limitation, the following actions: (a) by diverting the partnership opportunity of
12 the Smurfit-Stone Paper Mill from Plaintiff VANTEK into other entities owned by
13 Defendant SPIZZO and Defendant STILLWELL (e.g., Defendant M2GREEN,
14 LLC, and Defendant M2 GREEN REDEVELOPMENT, LLC); (b) by
15 misrepresenting their disinterest in this opportunity in order to purchase the
16 Smurfit-Stone Paper Mill for themselves and their separate corporate entities;
17 and/or (c) by engaging in other conduct to be determined through additional
18 discovery.

19 5.10 By reason of this breach of fiduciary duties, Plaintiff VANTEK has
20 been damaged in amount in excess of \$75,000.00 and in an exact amount to
21 be proven at trial.

**CAUSE OF ACTION NO. 3 INTERFERENCE
WITH BUSINESS EXPECTANCY**

**(Against Defendant Stillwell, Defendant Spizzo,
Defendant M2Green, LLC, Defendant M2 Green, Defendant
John Does and Jane Does, I through V, and Defendant
John Does, Inc., I through V)**

5.11 Plaintiff VANTEK realleges and reasserts the allegations set forth in paragraphs 1.1 through 5.10 above.

5.12 Defendant STILLWELL and Defendant SPIZZO individually and as agents and principals of Defendant M2GREEN, LLC, and Defendant M2 GREEN REDEVELOPMENT, INC., knew that Plaintiff VANTEK has a valid contractual and business expectancy in participating in the Smurfit-Stone Mill project pursuant to the Partnership Agreement.

5.13 Defendant STILLWELL and Defendant SPIZZO individually and as agents and principals of Defendant M2GREEN, LLC, Defendant M2 GREEN REDEVELOPMENT, INC., and Defendant GIGI intentionally interfered with Plaintiff VANTEK's expectancy by diverting this business expectancy of the Smurfit-Stone Paper Mill to Defendant M2GREEN, LLC, and Defendant M2 GREEN REDEVELOPMENT, INC., and by cutting out the participation of Plaintiff VANTEK, to enrich their own opportunities and deceive Plaintiff VANTEK.

5.14 Defendant STILLWELL, Defendant SPIZZO, Defendant M2GREEN, LLC, and Defendant M2 GREEN REDEVELOPMENT, INC. interfered with Plaintiff VANTEK's expectancy for improper means and used

VANT005.COM.wpd

COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 12

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688

1 improper means in accomplishing this interference.

2 5.15 As a result of this interference with business expectancy, Plaintiff
3 has been damaged in amount in excess of \$75,000.00 and in an exact amount
4 to be proven at trial.

5 VI. PRAYER FOR RELIEF.

6 WHEREFORE, Plaintiff VANTEK, INCORPORATED, prays the court for
7 judgment as follows:

8 1. The entry of judgment in excess of \$75,000 and in an exact
9 amount to be proven at trial against Defendant GREEN INVESTMENT GROUP,
10 INC., for breach of contract;

11 2. The entry of judgment in excess of \$75,000 and in an exact
12 amount to be proven at trial against Defendant GREEN INVESTMENT GROUP,
13 INC., Defendant RAYMOND S. SPILLWELL, Defendant MARK D. SPIZZO,
14 Defendant M2GREEN, LLC, and Defendant M2 GREEN REDEVELOPMENT,
15 LLC, for the breach of fiduciary duties;

16 3. The entry of judgment in excess of \$75,000 and in an exact
17 amount to be proven at trial against Defendant GREEN INVESTMENT GROUP,
18 INC., Defendant RAYMOND S. SPILLWELL, Defendant MARK D. SPIZZO,
19 Defendant M2GREEN, LLC, Defendant M2 GREEN REDEVELOPMENT, LLC,
20 Defendants JOHN DOES and JANE DOES, I through V, and Defendant JOHN
21 DOES, I through V, for interference with Plaintiff VANTEK's business
22 expectancy; and

1 4. The entry of such other relief as the court deems just and
2 equitable in favor of Plaintiff VANTEK, INCORPORATED.

3 DATED: June 20, 2011.

4
5 /s/ Donald G. Grant
6 DONALD G. GRANT, WSBA#15480

7 Grant & Elcock, PLLC
8 Heritage Plaza, Suite 104
9 15640 NE Fourth Plain Blvd.
10 Vancouver, WA 98682
11 TEL: (360) 694-8488
12 FAX: (360) 694-8688
13 E-MAIL: don@grantandelcock.com

14
15
16
17
18
19
20
21
22
23 VANT005.COM.wpd

24 COMPLAINT (Breach of Contract,
Breach of Fiduciary Duty, and Interference
with Business Expectancy) - 14

Grant & Elcock, PLLC
Attorneys and Counselors at Law
Heritage Plaza, Suite 104
15640 NE Fourth Plain Blvd.
Vancouver, WA 98682
TEL: (360) 694-8488
FAX: (360) 694-8688